

Public Prosecutor

AND

Andrew Siew Sii Pian

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 9 of 2005)**

Cons, P.; Power and Mortimer, JJ.A.
28th November, 2005.

Fine only imposed for criminal breach of trust as a servant – appeal by Public Prosecutor.
Held that the mitigation, although strong, did not amount to the “very exceptional circumstances” required by *R v Barrick*, but in the present circumstances the court would not interfere.

Zelda Wally Skinner (Deputy Public Prosecutor) for Appellant.
Respondent In Person (Absent)

Case cited in the Judgment:

R v Barrick [1985] 81 Cr. App.R.78

Cons, P.:

On 2nd July this year Andrew Siew Pii Pian pleaded guilty in the Intermediate Court to a charge of criminal breach of trust as a servant. He had been employed for four years as an assistant accountant in a company engaged in the sale of meat products. Part of his duties was to collect monies from various branches of the company and pay the monies into the bank. On two occasions at the end of April/early May he collected such monies but did not pay them into the bank. The total amount involved was \$47,321.75. The misappropriation was soon discovered and reported to the management.

At that time Mr. Siew was on leave. He returned on the 18th May and when confronted with the misappropriation, freely admitted it. It was then agreed between him and the company that he would repay the money in full by the 31st of the month. In fact he did so, in the sense that \$45,299.98 was paid in cash or by banker’s draft and the balance settled by reference to unpaid salary and the value of annual leave and air fares to which Mr. Siew was entitled. That was done on 1st June, the 31st May being a public holiday. However, before that date arrived, indeed only two days after the agreement had been reached, the company reported the matter to the police.

Mr. Siew had a clear record. He appeared to be the sole support of his parents in Sarawak who were ill and had been unable to support themselves for some two years. There was a suggestion that the monies in question had actually been spent on their medical treatment but this could not be substantiated. The Judge accepted that “in the circumstances of the case”, which she had earlier set out as we have, a fine alone would be appropriate. The most important of “the circumstances” appears to have been that “he had kept his word in making full payment by the dateline”. The fine she imposed was \$5,000, with six months imprisonment in default. We assume that the fine has been paid.

The Public Prosecutor took the view that the sentence was “manifestly inadequate” and appealed to this court. When the appeal was called on Mr. Siew did not appear, although notice of the hearing had been sent to his two addresses that were known to the court. We decided to proceed in his absence.

Our attention was then drawn, by way of example, to several cases decided within this jurisdiction, which cases had been cited to the judge below, and also to the well known case of *R v Barrick* [1985] 81 Cr. App.R.78. This case has long been accepted within this jurisdiction as authority for the basic principle that

“In general, a term of immediate imprisonment is inevitable, save in very exceptional circumstances or where the amount of money obtained is small. Despite the great punishment that offenders of this sort bring upon themselves, the court should nevertheless pass a sufficiently substantial term of imprisonment to mark the gravity of the offence”.

What is then the appropriate term of imprisonment will depend upon the particular circumstances of the individual case, bearing in mind that the general circumstances of Brunei Darussalam are not necessarily the same as those pertaining in England and Wales. *Barrick* was not mentioned by the Judge below, but was clearly present to her mind. The only question then for consideration is whether the present circumstances could properly be accepted as within the “very exceptional circumstances” necessary to avoid the otherwise inevitable imprisonment. With respect to the Judge below, we have to say that, although the mitigation was strong, in particular the full and speed repayment, it did not in our view bring the circumstances up to that level. The Judge ought to have imposed at least a short term of imprisonment. However, having regard to the length of time that has passed since the decision, together with what seems to be a likelihood that Mr. Siew has already left the territory, we do not think it appropriate to interfere at this stage. For this reason, and this reason alone, the appeal is dismissed.

Appeal dismissed